No. 12

In the Supreme Court of the United States

OCTOBER TERM, 1948

VIRGIL T. BRINEGAR, PETITIONER,

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE UNITED STATES

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OPINIONS BELOW

The opinions in the circuit court of appeals (R. 36-44) are reported at 165 F. 2d 512. The oral opinion of the district court overruling petitioner's motion to suppress evidence appears at pp. 12-14 of the Record.

JURISDICTION

The judgment of the circuit court of appeals was entered December 10, 1947 (R. 44-45). A petition for rehearing was denied January 2, 1948

(R. 47). The petition for a writ of certiorari was filed January 27, 1948, and certiorari was granted March 8, 1948 (R. 49). The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925. See also Rules 37(b)(2) and 45(a), F. R. Crim. P.

QUESTIONS PRESENTED

1. Whether a moving vehicle may be searched without a warrant on probable cause to believe that it is being used to carry contraband.

2. Whether there was probable cause for the search of petitioner's automobile.

CONSTITUTIONAL PROVISION AND STATUTES INVOLVED

The Fourth Amendment and the statutes involved are set out in the Appendix, *infra*, pp. 24-26.

STATEMENT

Petitioner was convicted on an information filed against him in the United States District Court for the Northern District of Oklahoma, charging the unlawful importation of intoxicating liquor into the State of Oklahoma from the State of Missouri, in violation of Section 3 of the Liquor Enforcement Act of 1936, Appendix, *infra*, pp. 24 and 25 (R. 1-2, 3). He was sentenced to imprisonment for 30 days and to pay a fine of $100 (R. 4). On appeal, the judgment was affirmed (R. 44-45), one judge dissenting (R. 41-44).

Before trial, petitioner moved to suppress the use in evidence of the liquor on which the prose-

cution was based on the ground that it had been obtained as the result of an unlawful search and seizure (R. 2).

The facts adduced at a hearing on the motion may be summarized as follows:

On March 3, 1947, two investigators of the Alcohol Tax Unit were, about 6 p. m., stationed in a car near the Quapaw Bridge in north Oklahoma, about three or four miles west of the Missouri line (R. 7-8, 12).[1] As petitioner passed the agents in his Ford coupe coming from the east, i.e., from the direction of Missouri, one of the agents recognized him as the man whom he had arrested about a month before for hauling liquor (R. 7-8). The agent had also seen petitioners loading liquor at Joplin, Missouri, at other times, and knew him to have a reputation for hauling liquor (R. 7).[2] Both agents testified that petitioner's car appeared to be loaded or weighted down (R. 8, 10).

As he passed the agents, petitioner "increased his speed at that moment," and the agents gave chase (R. 10, 8). Although the agents' car was "going as fast as it could" they "were not gaining

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[1] At the trial, one of the agents testified that the road on which they were stationed is a gravel road which runs directly east from Quapaw, Oklahoma, and that it has a number of curves, crosses the bridge, and then continues east into Missouri, connecting with the Missouri highway from Joplin to Seneca (R. 16).

[2] This agent testified at the trial that he recognized petitioner's car, which he "had seen before in Joplin," when the car passed the agents (R. 17).

* * * at all," until petitioner's car began skidding on a hill and he slowed down (R. 8). The agents then gained on petitioner, sounded the siren, and crowded petitioner's car to the side of the road where he stopped (R. 8, 10). Petitioner admitted that he saw the agents' car at the bridge (R. 7).

The agents got out of their car and as they approached petitioner, one of them asked "How much liquor have you got in the car this time," and petitioner replied, "Not too much" (R. 7, 8). After some questioning, petitioner said that there were 12 cases in the car (R. 11). One case was on the front seat. Petitioner testified that it was covered with a lap robe (R. 7), but one of the agents stated that it was open to view from outside the car (R. 8, 9). Twelve cases were found under and in back of the front seat (R. 7, 9).

The agents then placed petitioner under arrest (R. 9).

The district judge was of the opinion that the agents did not have sufficient probable cause to justify a search of the automobile before they stopped the car, since they were relying primarily on the fact that petitioner was known to be a bootlegger. He held, however, that petitioner's voluntary admissions, made after the car had been stopped, constituted probable cause for a search, and that the detention of petitioner by stopping his car, whether it be deemed an arrest or not, did not vitiate petitioner's voluntary statements as justi-

fying the search. He accordingly ruled that the evidence was admissible (R. 12-14.)

The circuit court of appeals (one judge dissenting) was of the same view. They thought that the facts within the knowledge of the agents prior to the time petitioner made the incriminating statements did not constitute probable cause for a search, but that, having stopped the car for the purpose of investigating, the agents could then rely on petitioner's voluntary statements, which did furnish probable cause for the search (R. 36-41).

SUMMARY OF ARGUMENT

I. The search of a moving vehicle without a warrant on probable cause to believe that it is being used to transport contraband is a reasonable search within the purview of the Fourth Amendment. *Carroll* v. *United States*, 267 U. S. 132, 153. That doctrine has not hitherto been deemed to rest on statutory justification. The basic rationale of the *Carroll* decision, and of subsequent decisions by this Court and lower federal courts, is that such a search of a moving vehicle without a warrant is reasonable because the securing of a warrant is not practicable inasmuch as the vehicle may disappear before a warrant can be obtained.

In any event, as to the particular offense here involved, there is statutory justification for the search in Section 4 of the Liquor Enforcement Act of 1936, which directs the seizure and forfeiture of vehicles used in violation of that act. This

Court has held that authority to seize necessarily implies authority to search on probable cause. *United States* v. *Lee*, 274 U. S. 559; *Carroll* v. *United States*, 267 U. S. 132.

This power to search is not dependent on the power to arrest. *Carroll* v. *United States*, 267 U. S. 132, 158-159. Hence the state law of arrest has no relevancy to the problem at hand.

II. In the instant case, the facts within the knowledge of the agents at the time they stopped petitioner's automobile constituted probable cause to believe that it was being used to commit an offense under the Liquor Enforcement Act of 1936. Petitioner was a known liquor hauler and on the occasion in question he was observed driving a heavily loaded vehicle from a source of supply, wet Missouri, to the place where he plied his trade, dry Oklahoma. As soon as he saw the agents, he took flight, a circumstance which, on reason and authority, has always been deemed strongly suggestive of guilt. These facts are far more persuasive than those on which this Court found probable cause for the search of a moving vehicle in the *Carroll* case.

The conclusion of the courts below that there was insufficient probable cause for stopping petitioner's automobile is a legal conclusion upon undisputed facts, not a finding of fact based on the resolution of conflicting testimony. It is a conclusion reached only by completely disregarding the most significant of those undisputed facts, the fact

of flight. The conclusion is unreasonable on its face and disregards the controlling decisions of this Court.

III. Since we believe that the agents had probable cause for searching petitioner's automobile before they stopped it, we think it is unnecessary to reach the question on which the court below divided, i.e., whether petitioner's admissions, made after the car had been stopped but not searched, could be used as justification for the actual search. If the act of stopping the car was itself illegal, we believe that the decision of this Court in *Johnson* v. *United States*, 333 U. S. 10, compels the conclusion that the admissions made as the result of that illegal act could not be used as the basis for a search. And the decision of this Court in *Carroll* v. *United States*, 267 U. S. 132, 153-154, indicates that nothing less than probable cause will justify the search of a moving vehicle.

ARGUMENT

I

THE FOURTH AMENDMENT AUTHORIZES THE SEARCH OF A MOVING VEHICLE WITHOUT A WARRANT UPON PROBABLE CAUSE TO BELIEVE THAT THE VEHICLE IS BEING USED TO TRANSPORT CONTRABAND.

The search of a moving vehicle without a warrant on probable cause to believe that the vehicle is being used to transport contraband is a reasonable search within the purview of the Fourth

Amendment. This Court so held in *Carroll* v. *United States,* 267 U. S. 132, 153, pointing out that

> the guaranty of freedom from unreasonable searches and seizures by the Fourth Amendment has been construed, practically since the beginning of the Government, as recognizing a necessary difference between a search of a store, dwelling house or other structure in respect of which a proper official warrant readily may be obtained, and a search of a ship, motor boat, wagon or automobile, for contraband goods, where it is not practicable to secure a warrant because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought.

See also *Husty* v. *United States,* 282 U. S. 694, 700, where this Court said

> The Fourth Amendment does not prohibit the search, without warrant, of an automobile, for liquor illegally transported or possessed, if the search is upon probable cause; and arrest for the transportation or possession need not precede the search.

There is a suggestion in the recent decision of this Court in *United States* v. *Di Re,* 332 U. S. 581, 585, that the *Carroll* doctrine is limited to situations in which searches of moving vehicles are specifically authorized by statute. We cannot so read the *Carroll* decision. Obviously, a statute cannot enlarge the scope of a constitutional amend-

ment. And the *Carroll* decision, as we read it, referred to the early statutes authorizing searches of moving vehicles without warrants, merely as reflecting the understanding of the Fourth Amendment by contemporary legislators, not as enlarging the definition of a reasonable search under that amendment.

Certainly the courts, including this Court, have not heretofore deemed the *Carroll* principle to be tied to any specific statutory provision. In *Scher* v. *United States*, 305 U. S. 251, 254, which arose after the repeal of prohibition, this Court applied the *Carroll* doctrine to a search of a moving vehicle upon reasonable cause to believe that it was being used in the transportation of non-taxpaid liquor, despite the absence of a statute similar to Section 26 of the National Prohibition Act, which specifically imposed on agents the duty to seize liquor being illegally transported. The Liquor Taxing Act of 1934 (Appendix, *infra*, p. 26), on which the *Scher* prosecution was based, merely made unlawful the transportation, possession, etc., of distilled spirits not bearing the proper stamps, and provided generally for the forfeiture of liquor found in containers not bearing the required stamps.

Similarly, the circuit courts of appeal have consistently applied the *Carroll* doctrine, not only to situations involving the transportation of liquor since the repeal of prohibition,[3] but to searches

[3] E.g., *United States* v. *One 1946 Plymouth Sedan*, 167 F. 2d 3 (C. C. A. 7); *One 1941 Ford ½ Ton Automobile Truck* v.

of moving vehicles reasonably believed to be carrying other contraband as well. *Coupe* v. *United States*, 113 F. 2d 145 (App. D. C.), certiorari denied, 310 U. S. 651 (lottery tickets); *Leong Chong Wing* v. *United States*, 95 F. 2d 903 (C. C. A. 9) (narcotics); *Stobble* v. *United States*, 91 F. 2d 69 (C. C. A. 7) (narcotics). In none of these decisions are there any intimations that the courts deemed it necessary to find statutory justification for a search of a moving vehicle. The rationale of the decisions is that on which we understand the *Carroll* case itself to rest, i.e., that a search of a moving vehicle without a warrant on probable cause is reasonable because the securing of a warrant is not reasonably practicable inasmuch as the vehicle may disappear before a warrant can be obtained. The recent decisions of this Court since the *DiRe* decision—*Johnson* v. *United States*, 333 U. S. 10, and *Trupiano* v. *United States*, No. 427, decided June 14, 1948—in which this Court has emphasized the necessity for securing a warrant where there is time to do so, impliedly recognize, we think, that a warrant is not necessary where, as here, the securing of a warrant is not reasonably practicable.

In any event, as to the particular offense here involved, if statutory authorization to search with-

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United States, 140 F. 2d 255 (C.C.A. 6); *Albertyv. United States*, 134 F. 2d 135 (C.C.A. 10); *Jones* v. *United States*, 131 F. 2d 539 (C.C.A. 10); *United States* v. *Sebo*, 101 F. 2d 889 (C.C.A. 7); *Poulas* v. *United States*, 95 F. 2d 412 (C.C.A. 9); *Rodriguez* v. *United States*, 80 F. 2d 646 (C.C.A. 5).

out a warrant is necessary, such authority exists. Section 4 of the Liquor Enforcement Act of 1936, Appendix, *infra*, p. 25, provides:

> All intoxicating liquor involved in any violation of this Act * * * and every vehicle or vessel used in the transportation thereof, shall be seized and forfeited. Such seizure and forfeiture, and the disposition of such property subsequent to seizure and forfeiture, or the disposition of the proceeds from the sale of such property, shall be in accordance with existing laws or those hereafter in existence relating to seizures, forfeitures, and dispositions of property or proceeds, for violation of the internal-revenue laws.

This is not very different from Section 26 of the National Prohibition Act, Appendix, *infra*, pp. 25-26, the statute involved in the *Carroll* case, which provided that when law enforcement officers "shall discover any person in the act of transporting" intoxicating liquors in any vehicle in violation of law, the liquor and vehicle should be seized, and the person in charge thereof arrested. As in this case, the statute specifically directed seizure without expressly authorizing a search, but the Court found in the authority to seize the authority to search. See also *United States* v. *Lee*, 274 U. S. 559, 562, where this Court held that authority to seize necessarily implied authority to search on probable cause. This Court there said:

> * * * Officers of the Coast Guard are authorized, by virtue of Revised Statutes, § 3072,

> to seize on the high seas beyond the twelve-mile limit an American vessel subject to forfeiture for violation of any law respecting the revenue. * * * From that power it is fairly to be inferred that they are likewise authorized to board and search such vessels when there is probable cause to believe them subject to seizure for violation of revenue laws, and to arrest persons thereon engaged in such violation. * * *

Since in this case the statute requires seizure of a vehicle being used to transport liquor into a dry state, it also impliedly authorizes a search of such a vehicle upon probable cause to believe that it is being used for that illegal purpose. Hence the search of petitioner's automobile was lawful if there was probable cause to believe that it was being used in violation of the Liquor Enforcement Act of 1936.

The question at issue here is the right to search the vehicle, not the right to arrest the driver. In the *Carroll* case, this Court specifically held that the search of a moving vehicle may precede an arrest, and that the right to stop and search a vehicle is not dependent on the right to arrest. This Court there said, 267 U. S. at pp. 158-159:

> The right to search and the validity of the seizure are not dependent on the right to arrest. They are dependent on the reasonable cause the seizing officer has for belief that the contents of the automobile offend against the law.

See also *Husty* v. *United States*, 282 U. S. 694, 700.

Since, therefore, the search in this case was not dependent on the right to arrest, the state law of arrest has no relevancy to the basic issue in this case, i.e., the right of the officers to stop the car for the purpose of conducting a search. Petitioner himself so recognizes (see Br. 30), his discussion of the state law of arrest being directed at the subsidiary problem, discussed *infra*, pp. 19-22, as to whether, assuming lack of probable cause to stop the car, the search in this case could nevertheless be sustained. The question whether the search of a moving vehicle is a reasonable search under the Fourth Amendment is, as the *Carroll* case makes clear, a question of federal constitutional law, unaffected by the state law of arrest. Since, as we have shown, such a search based on probable cause is reasonable under the Amendment and, as to the offense here involved, authorized by federal statute, it is clearly a proper search under federal law.

II

THE AGENTS HAD PROBABLE CAUSE TO STOP AND SEARCH PETITIONER'S CAR

The fundamental issue in this case is, therefore, whether the facts within the knowledge of the agents at the time they stopped petitioner's automobile constituted probable cause to believe that it was being used to commit an offense under the Liquor Enforcement Act of 1936.

The legal principles which must govern that determination are not in dispute. The accepted definitions of probable cause are those adopted with approval from state cases by this Court in *Stacey* v. *Emery*, 97 U. S. 642, 645:

> * * * A reasonable ground of suspicion, supported by circumstances sufficiently strong in themselves to warrant a cautious man in the belief that the party is guilty of the offence with which he is charged.
>
> * * * Such a state of facts as would lead a man of ordinary caution to believe, or to entertain an honest and strong suspicion, that the person is guilty. * * *

Chief Justice Marshall in *Locke* v. *United States*, 7 Cranch 339, 348, defined probable cause thus:

> It is contended, that probable cause means prima facie evidence, or, in other words, such evidence as, in the absence of exculpatory proof, would justify condemnation. This argument has been very satisfactorily answered on the part of the United States, by the observation, that this would render the provision totally inoperative. It may be added, that the term "probable cause," according to its usual acceptation, means less than evidence which would justify condemnation; and, in all cases of seizure, has a fixed and well-known meaning. It imports a seizure made under circumstances which warrant suspicion. In this, its legal sense, the court must understand the term to have been used by Congress.

Or, as this Court, again quoting a state case, said in *Carroll* v. *United States*, 267 U. S. 132, 161, "The

substance of all the definitions is a reasonable ground for belief in guilt."

Applying these principles to the facts here presented, we submit that, as a matter of law, the agents had probable cause for stopping and searching petitioner's automobile. The agents knew from previous observations and contact with petitioner that he was a liquor hauler. He passed the agents' car in the late afternoon on a gravel, tortuous, back road which led from wet Missouri into dry Oklahoma, only three or four miles from the Missouri line. The car appeared to the agents to be loaded or weighted down. When petitioner saw the agents, he took flight and was overtaken only when he had to slow his car to avoid skidding on a hill. On the totality of these circumstances, we submit, a reasonable law enforcement officer was amply justified in concluding that petitioner was engaged in a violation of law.

The question at issue here is really foreclosed by the *Carroll* decision. In that case, prohibition agents knew that the defendants were bootleggers in Grand Rapids, because several months prior to the search, the defendants had agreed to sell liquor to the agents, although they failed to make delivery. The agents, on their regular tour of duty on the highway, saw the defendants in an automobile, which they identified from their previous contact with them, proceeding from Detroit to Grand Rapids. Detroit was known to be an active center

for the illegal introduction of liquor into the country. On these facts alone, this Court held that the agents had probable cause to stop and search the Carroll car. 267 U. S. at 134-136, 160.

The facts here clearly present a firmer basis for action than those proved in the *Carroll* case. Here, as in the *Carroll* case, the agents had information that petitioner was a known bootlegger. Here, as in the *Carroll* case, the agents saw petitioner driving from a known source of supply—wet Missouri—into the place where he plied his trade—dry Oklahoma. And here, there were in addition significant factors not present in the *Carroll* case—the fact that petitioner was driving a heavily loaded car on a back road and, even more important, the fact that he took flight the moment he saw that the agents were following him. The element of flight is, we submit, a very significant factor in appraising the reasonableness of the officers' action, an element which elevates the proof in this case far above that presented in the *Carroll* case. The disregard of this very significant factor by the courts below accounts, we think, for their erroneous conclusion that the agents did not have probable cause to search petitioner's automobile before they stopped it.

The courts have always recognized flight as a significant factor to be considered in determining probable cause for belief in guilt. *Husty* v. *United States*, 282 U. S. 694, 700-701; *Talley* v. *United*

States, 159 F. 2d 703 (C.C.A. 5); *Jones* v. *United States,* 131 F. 2d 539, 541 (C.C.A. 10); *Levine* v. *United States,* 138 F. 2d 627, 629 (C.C.A. 2). In *Thompson* v. *United States,* 44 F. 2d 165, 166 (C.C.A. 5), the court said that a driver's "apparent attempt to escape" by increasing his speed when he saw Federal agents would "naturally confirm" the officers' belief, based on information received from another, that the driver was carrying liquor. In *United States* v. *Lerner,* 35 F. Supp. 271, 274 (D. Md.), the court, although expressing doubt as to whether the circumstances preceding flight would have constituted probable cause, held that the defendant's flight, after the officers had identified themselves, was the decisive additional circumstance justifying an arrest and search. The court there said, "Flight is at least very suggestive of guilt." As the Circuit Court of Appeals for the Second Circuit, speaking through L. Hand, J., stated in *United States* v. *Heitner,* 149 F. 2d 105, 107 (C.C.A. 2), certiorari denied *sub nom. Cryne* v. *United States,* 326 U. S. 727, a case which involved a similar question of flight as furnishing probable cause for the arrest of men who fled in an automobile at high speed after observing police officers, "it has long been recognized that flight, like the spoliation of papers, is a legitimate ground for the inference of guilt" (citing cases). Certainly if a court and jury may consider flight as a factor in determining *guilt* of a defendant, *a fortiori* an

officer of the law may rely on flight as strong evidence of probable cause. As the court stated in the *Heitner* case (149 F. 2d at 106-107) "indeed, the 'reasonable cause' necessary to support an arrest cannot demand the same strictness of proof as the accused's guilt upon a trial, * * * * * * it has at no time been doubted that flight is a circumstance from which a court or an officer may infer what everyone in daily life inevitably would infer."

In the circumstances of this case, in which a known bootlegger fled in an apparently overloaded car along a back road leading into dry territory, it would seem clear that the officers had probable cause to believe that he was carrying liquor.

The conclusion of the courts below that there was insufficient probable cause to warrant the agents in stopping petitioner's car did not depend on the resolution of conflicting testimony. The significant facts in this case—petitioner's reputation, the road on which he was travelling, the appearance of his car, and the fact of flight—are not disputed. The holding of the courts below that probable cause did not exist is thus not a finding of fact, but a legal conclusion upon established facts. As appears from the opinions in both courts, that conclusion was reached only by completely disregarding one of the most significant of those undisputed facts, the fact of flight. The conclusion is unreasonable on its face, and disregards the

controlling decisions of this Court. It is, we submit, a conclusion which cannot be sustained.

III

SINCE THERE WAS PROBABLE CAUSE TO STOP PETITIONER'S AUTOMOBILE, IT IS UNNECESSARY TO CONSIDER WHETHER PETITIONER'S ADMISSIONS MADE AFTER THE CAR WAS STOPPED CAN BE USED AS JUSTIFICATION FOR THE SEARCH.

In the view we take of this case, that the agents had probable cause to stop and search petitioner's car before they talked with him, it becomes unnecessary to consider the question on which the court below divided, i.e., whether petitioner's admissions, made after the car had been stopped but not searched, may properly be considered in determining whether there was probable cause for the actual search. Although not so phrased in the decisions below, we think that question really amounts to this—whether a car may be stopped for the purpose of inquiry but not for search on the basis of suspicion not amounting to probable cause.

If the act of forcing petitioner to stop his car was itself an illegal act, the decision of this Court in *Johnson* v. *United States*, 333 U. S. 10, compels, we think, the conclusion reached by the dissenting judge below that petitioner's admissions could not be used as justification for the search of the car. In the *Johnson* case, a police officer who originally went to a hotel to investigate a report that opium was being smoked there, traced the odor of burn-

ing opium to the room of the manager of the hotel. The officer knocked on the door, stated that he wanted to talk to the manager, and was admitted. Finding in the room only one person who could reasonably have been believed to be in possession of smoking opium, the officer arrested her and searched the room. This Court held that the search commenced when the officer obtained entry to the room under color of his office, and that the entry and search were illegal. This Court further held that, since the officer had obtained entry by illegal means, evidence obtained by a search after the arrest of petitioner was not admissible, even though the facts immediately apparent to the officer's view when he entered the room quite clearly established that petitioner had recently committed a felony. Hence, in the instant case, if the act of the agents in forcing petitioner to stop his car was an illegal act, it must, under the *Johnson* case, be considered the beginning an illegal search, just as the entry into the room in the *Johnson* case was considered the beginning of an illegal search. Furthermore, if, as the *Johnson* case holds, the original illegal entry results in the exclusion of evidence obtained as the result of that illegal entry, whether or not an intervening arrest occurs, then here the original illegal act in stopping the car must necessarily preclude the use of an admission obtained as the result of that illegal act as the basis for a search.

Courts have in a number of instances assumed that law enforcement officers may on suspicion properly stop a car for the purpose of inquiry, and that, when inquiry confirms suspicion, a search may properly be made. *Morgan* v. *United States*, 159 F. 2d 85, 86 (C.C.A. 10); *Turner* v. *Camp*, 123 F. 2d 840, 842 (C.C.A. 5); *Kaiser* v. *United States*, 60 F. 2d 410, 412 (C.C.A. 8), certiorari denied, 287 U. S. 654; *Mabee* v. *United States*, 60 F. 2d 209 (C.C.A. 3); *Cohn* v. *United States*, 16 F. 2d 652, 653 (App. D. C.). None of these decisions, however, articulate even as clearly as does the majority below, their basic assumption that stopping a car is different from searching it, and that less proof is necessary to justify the act of stopping than would be necessary to justify a search.[1] It is difficult to reconcile this assumption with the principles enunciated by this Court in the *Carroll* case, 267 U. S. 132 at 153-154:

> * * * It would be intolerable and unreasonable if a prohibition agent were authorized to stop every automobile on the chance of finding liquor and thus subject all persons lawfully using the highways to the inconvenience

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[1] The majority opinion states (R. 39):

"The question presented then is whether the investigators, having sufficient information to suspect Brinegar, but not sufficient information to constitute probable cause for a search of the coupe and the arrest of Brinegar, could, after stopping him and interrogating him with respect to whisky in the coupe, lawfully act upon the information obtained as a basis for probable cause for the search and seizure."

> and indignity of such a search. Travellers may be so stopped in crossing an international boundary because of national self protection reasonably requiring one entering the country to identify himself as entitled to come in, and his belongings as effects which may be lawfully brought in. But those lawfully within the country, entitled to use the public highways, have a right to free passage without interruption or search unless there is known to a competent official authorized to search, probable cause for believing that their vehicles are carrying contraband or illegal merchandise. * * *

The act of forcibly stopping a car carries with it a certain amount of danger. And while we do not doubt that an officer may legitimately stop and question a pedestrian on suspicion not amounting to probable cause, or may legitimately question the driver of a vehicle who has stopped of his own accord (see, e.g., *Poulas* v. *United States*, 95 F. 2d 412 (C.C.A. 9); *Weathersbee* v. *United States*, 62 F. 2d 822 (C.C.A. 5), certiorari denied, 289 U. S. 737), we doubt that anything less than probable cause would justify the forcible stopping of a moving automobile. For that reason we base our conclusion that the judgment below should be affirmed on the ground that, on the facts of this case, the agents did have probable cause to stop and search petitioner's automobile.

CONCLUSION

Since the agents had probable cause to believe that petitioner was violating the Liquor Enforcement Act of 1936 at the time they stopped his automobile, the liquor obtained as a result of the search of that automobile was properly admitted in evidence. We, therefore, respectfully submit that the judgment below should be affirmed.

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AUGUST 1948.

APPENDIX

The Fourth Amendment to the Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The Liquor Enforcement Act of June 25, 1936, c. 815, 49 Stat. 1928, 27 U.S.C. 221, ff., provides in pertinent part:

> Sec. 3. (a) Whoever shall import, bring, or transport any intoxicating liquor into any State in which all sales (except for scientific, sacramental, medicinal, or mechanical purposes) of intoxicating liquor containing more than 4 per centum of alcohol by volume are prohibited, otherwise than in the course of continuous interstate transportation through such State, or attempt so to do, or assist in so doing, shall: (1) If such liquor is not accompanied by such permit or permits, license or licenses therefor as are now or hereafter required by the laws of such State; or (2) if all importation, bringing, or transportation of intoxicating liquor into such State is prohibited by the laws thereof; be guilty of a misdemeanor and shall be fined not more than $1,000 or imprisoned not more than one year, or both.

* * * * *

> Sec. 4. All intoxicating liquor involved in any violation of this Act * * * and every vehicle or vessel used in the transportation thereof, shall be seized and forfeited. Such seizure and forfeiture, and the disposition of such property subsequent to seizure and forfeiture, or the disposition of the proceeds from the sale of such property, shall be in accordance with existing laws or those hereafter in existence relating to seizures, forfeitures, and dispositions of property or proceeds, for violation of the internal-revenue laws.

Oklahoma Session Laws, 1939, c. 16, Art. 1, Sec. 1, in effect at the time of the transportation charged in the information, provided:

> It shall be unlawful for any person, individual or corporate, to import, bring, transport, or cause to be brought or transported into the State of Oklahoma, any intoxicating liquor, as defined by the laws of this State, containing more than four (4%) per cent of alcohol by volume, without a permit first secured therefor as hereinafter provided.

Section 26 of the National Prohibition Act of October 18, 1919, c. 85, Title II, 41 Stat. 307, provided:

> Sec. 26. When the commissioner, his assistants, inspectors, or any officer of the law shall discover any person in the act of transporting in violation of the law, intoxicating liquors in any wagon, buggy, automobile, water or air craft, or other vehicle, it shall be his duty to seize any and all intoxicating liquors found

therein being transported contrary to law. Whenever intoxicating liquors transported or possessed illegally shall be seized by an officer he shall take possession of the vehicle and team or automobile, boat, air or water craft, or any other conveyance, and shall arrest any person in charge thereof.

The Liquor Taxing Act of January 11, 1934, c. 1, 48 Stat. 313, 26 U.S.C. 2803, ff., provides in pertinent part:

> Sec. 201. No person shall * * * transport, possess, buy, sell, or transfer any distilled spirits, unless the immediate container thereof has affixed thereto a stamp denoting the quantity of distilled spirits contained therein and evidencing payment of all internal-revenue taxes imposed on such spirits. * * *
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> Sec. 206. All distilled spirits found in any container required to bear a stamp by this title, which container is not stamped in compliance with this title and regulations issued thereunder, shall be forfeited to the United States. * * *

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